



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

STREETS—SUBWAYS AS ADDITIONAL BURDENS.—Condemnation proceedings were instituted for acquiring the fee of certain lands for street purposes and the damages were settled by the Commissioners, but before the final award was made the appellant learned of a proposal to extend a subway in the proposed street. He thereupon called for the Commissioners to estimate his damages, contending that a subway was made a public highway under the Rapid Transit Act. The Commissioners refused as a matter of law to estimate his damages; *held* that the refusal was proper. *In re New Street in the City of New York* (N. Y. 1915) 109 N. E. 104.

Under reasons both historical and legal, the City of New York, in the construction of a subway, is acting in its proprietary capacity, *In re Board of Rapid Transit Com'rs*, 112 N. Y. Supp. 619. Another basic consideration lies in the fact that a subway is an exclusive occupation of the land and not a "street use as the term is used in law." Herein New York differs from Massachusetts, for in the latter state a subway is considered a public use and not as an additional servitude, *Sears v. Crocker et al*, *Merchants' National Bank v. Same*, *John C. Gray et al*, *Trustees v. Same*, 184 Mass. 586; *New England Telephone & Telegraph Co. v. Boston Terminal Co.*, 182 Mass. 397; *Eustis v. Milton Street Railway Co.*, 183 Mass. 586. When the subway is considered an additional servitude the abutting owner, whether the fee is in the city or whether the city has merely an easement for surface use, can collect damages for the removal of lateral support and a condemnation for street purposes does not include the subway purpose, *In re Board of Rapid Transit Com'rs*, *supra*. That is, a subway is not contemplated in the condemnation for public purposes, and not within the rule of *Radcliff's Exec. v. Mayor & of Brooklyn*, 4 N. Y. 195 which refers only to contemplated uses, and *March v. City of New York*, 74 N. Y. Supp. 1151, where no damage was claimed. The holding in the principal case is but an outgrowth of the New York decisions meeting in full the demands of the Rapid Transit Act, authorizing the condemnation of the rights of abutting owners in order to construct a subway. The court in affirming the action of the Commissioners has acknowledged that three condemnation proceedings are necessary to give the municipality full right to use the streets: one, to obtain the surface use; second, to construct elevated railroads, *Story v. New York Elevated Ry.*, 90 N. Y. 122, *Rose v. New York & H. R. Co. et al.*, 95 N. Y. Supp. 711; and third, to construct a subway. Further, in proceedings instituted for one purpose, damages for another need not be awarded.

WILLS.—COMPETENCY OF SUBSCRIBING WITNESS.—Where one of the subscribing witnesses to a will was president of, and a stockholder in, the corporation named as trustee, it was *held*, that he was a competent witness, such as is required by NEB. REV. ST. 1913, § 1290. *In re Wiese's Estate* (Neb. 1915), 153 N. W. 556.

The sustaining of this devise depends upon the provisions of two statutes: first, whether, under the provision requiring competent subscribing witnesses, he was such a witness; and second, whether, under the provision declaring gifts to witnesses void, this devise in trust was void by reason of the bene-